

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

ELIJAH JONES, JR.,

Petitioner,

v.

Case No. 05-CV-172

STATE OF WISCONSIN,

Respondent.

ORDER GRANTING CERTIFICATE OF APPEALABILITY

Elijah Jones, Jr. (“Jones”) is a prisoner incarcerated pursuant to a Wisconsin state court judgment. Proceeding *pro se*, he seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2254. All parties consented to the full jurisdiction of a magistrate judge and on February 6, 2007, this court denied Jones’ petition on its merits as well as various other motions filed by Jones.

On February 26, 2007, Jones filed a notice of appeal. Jones has not requested a certificate of appealability as is required by 28 U.S.C. § 2253 and Federal Rule of Appellate Procedure 22(b). However, when a petitioner fails to properly request a COA, the court shall construe a notice of appeal as a request for a COA.

Where a district court has rejected the constitutional claims on the merits, the showing required to satisfy § 2253(c) is straightforward: the petitioner must demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong. Slack v. McDaniel, 529 U.S. 473, 484 (2000). However, a petitioner is not required to prove that some jurists might grant the petition; “a claim can be debatable even though every jurist of reason might agree.” Miller-El v. Cockrell, 537 U.S. 322, 338 (2003).

This court believes that Jones' claim that the Wisconsin Court of Appeals' decision that Jones was not denied the effective assistance of counsel was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States may be debatable among jurists of reason. Therefore, this court shall grant the Jones a certificate of appealability as to the single issue raised in the petition, specifically that Jones was denied effective assistance of counsel.

IT IS THEREFORE ORDERED that Jones is hereby **granted** a certificate of appealability.

Dated at Milwaukee, Wisconsin this 28th day of February, 2007.

s/AARON E. GOODSTEIN
U.S. Magistrate Judge